

**REMARKS**

Favorable reconsideration is respectfully requested in view of the foregoing amendments and the following remarks.

**I. CLAIM STATUS AND AMENDMENTS**

Claims 2-16 were pending in this application when last examined.

Claims 2-5 and 14-16 were examined in this application when last examined and stand rejected.

Claims 6-13 were withdrawn as non-elected subject matter.

Claims 4 and 6-13 have been cancelled without prejudice or disclaimer thereto.

Applicants reserve the right to file a continuation or divisional application on any cancelled subject matter.

Claim 15 has been amended to better conform with US practice and to specify the average particle diameter of the polymer beads. Support can be found in the disclosure, for example, at page 8, lines 23-25, page 15, lines 13-15, page 21, lines 10-13 (Example 1) and page 24, lines 9-14 (Example 2).

Therefore, no new matter has been added by this amendment.

Claims 2, 3, 5 and 14-16 are pending upon entry of this amendment.

**II. OBVIOUSNESS REJECTION**

On pages 2-3 of the Office Action, claims 2-5 and 14-16 were rejected under 35 U.S.C. § 103(a) as obvious over Arai (EP 0162,302).

This rejection is respectfully traversed as applied to the amended claims.

To establish obviousness, three criteria must be met. First, the prior art references must teach or suggest each and every element of the claimed invention. M.P.E.P. § 2143.03. Second, there must be some suggestion or motivation in the references to either modify or combine the

reference teachings to arrive at the claimed invention. M.P.E.P. § 2143.01. Third, the prior art must provide a reasonable expectation of success. M.P.E.P. § 2143.02.

On page 3 of the Action, it was indicated that one having ordinary skill in the art would have expected the taught light reflective particle to have indistinguishable properties from the claimed polymer bead containing embedded light reflective particles because both are with the same size range and have the same light reflective properties.

Applicants respectfully disagree with this position for the reasons set forth in the response filed November 29, 2005. Nonetheless, to expedite prosecution, the claims have been amended to specify the average particle diameter of the polymer beads. Specifically, amended claim 15 calls a dry measuring test device having polymer beads with an average particle diameter of 3 to 15  $\mu\text{m}$ .

Arai (EP 0162,302) fails to disclose or suggest a dry measuring test device having polymer beads with an average particle diameter from 3 to 15  $\mu\text{m}$ . Instead, Arai (EP 0162,302) discloses light reflective particles having a diameter of 0.1 to 0.2 microns. It is respectfully submitted that the prior art polymer beads having a diameter of 0.1 to 0.2 microns fails to suggest polymer beads having an average particle diameter from 3 to 15  $\mu\text{m}$ . For this reason, Arai (EP 0162,302) fails to teach or suggest each and every element of the claimed invention.

Therefore, the rejection of claims 2-5 and 14-16 under 35 U.S.C. § 103(a) is untenable and should be withdrawn.

### **III. OTHER MATTER**

Applicants wish to bring to the Office's attention divisional application Serial No. 09/473,165, now US Patent No. 6,905,653. A copy of the front page and claims of the patent are attached herewith for the Examiner's convenience. The claims of the divisional application are directed to the withdrawn and now cancelled claims of the instant application. Thus, obviousness type double patenting should not apply.


**CONCLUSION**

In view of the foregoing amendments and remarks, it is respectfully submitted that the present application is in condition for allowance and early notice to that effect is hereby requested.

If the Examiner has any comments or proposals for expediting prosecution, please contact the undersigned attorney at the telephone number below.

Respectfully submitted,

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June 9, 2006

Attorney Docket No. 2003\_1789  
Serial No. 08/959,125  
June 9, 2006

**ATTACHMENTS**

1. A copy of the front page and claims of US Patent No. 6,905,653.